IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 615 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANDHI ARBI IBRAHIM

Versus

DEPUTY COLLECTOR

Appearance:

1. Civil Revision Application No. 615 of 2001

MR ANSHIN H DESAI for Petitioner No. 1

MR UR BHATT, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/04/2004

ORAL JUDGEMENT

Heard Mr.Abhijit Joshi on behalf of Mr.A.H.Desai, learned advocate for the petitioner.

2) By filing this revision under Section 115 of C.P.C., the applicant has challenged the order passed by the trial Court below Exh.35 as well as below Exh.36 in Civil Misc.Application No.26/1998. Application at Exh.35 was submitted by the proposed party for permitting him to be joined as a party in the main proceedings. The case of the applicant-third party before the trial Court was that he is vitally interested in the proceedings and his claim is also involved so far as payment of money is concerned, on the basis of the decree passed in Regular Civil Suit No.26/1996. The trial Court came to the conclusion that the applicant before the trial Court has misguided the authority and on his misrepresentation, the authority deposited the amount in a wrong proceeding. After giving cogent reasons, the trial Court allowed the said application by which proposed third party was allowed to be joined as a party in the main proceedings.

3) By another order below Exh.36, the trial Court directed the present applicant to redeposit the amount which he has withdrawn. The trial Court has found that the said amount was withdrawn after giving undertaking that he will re-deposit the amount in case any such order is passed. The trial Court has clearly observed this part in para 11 of the order and ordered the applicant to redeposit the amount, which he has withdrawn.

4) Considering the reasoning given by the trial Court that the present applicant, after suppressing material fact, has taken benefit of withdrawing the amount in question, the trial Court is perfectly justified in asking the applicant to redeposit the amount. By the impugned order, the trial Court has not permitted the third party to withdraw the said amount and the trial Court will now adjudicate this issue and pass appropriate order for withdrawal of amount in accordance with law.

5) Mr.Abhijit Joshi has vehemently submitted that the trial court has committed an error in passing the impugned order, as the petitioner is the owner of the land in question. However, all these questions can be considered only after the third party is ordered to be brought on record, and, subsequently, the Court can examine all the points. By asking the petitioner to redeposit the amount would not mean that, on merits, the trial Court has come to the conclusion that the petitioner has no right, title or interest in the suit

property. All these questions are required to be decided after hearing the third party, who is permitted to be brought on record. The trial Court, while deciding the matter, shall decide all these questions in accordance with law, without being influenced by the observations, which have been made at the time of deciding applications Exh.35 and 36.

6) In my view, the order of the trial Court by which applicant is ordered to redeposit the amount, is not required to be interfered by this Court in a revision under Section 115 of C.P.C. Accordingly, orders passed by trial Court below Exh.35 and Exh.36 are confirmed. The trial Court is directed to see that the applicant may redeposit the amount as per the order of the trial Court.

7) In view of above order, this Revision Application is dismissed. Rule is discharged. No costs.

8) Writ to be sent to the trial Court forthwith.

(P.B.Majmudar,J.)

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